IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2186 OF 2002

M/s.Padmarag Co-operative Housing
Society Ltd. & Anr. .. Petitioners

versus

State of Maharashtra & ors. .. Respondents

...

Mr.S.G. Deshmukh with D.R. Talankar for the petitioner.

Mr.Milind More, AGP for the respondent nos.1 to 3.

Mr.Mahabaleshwar N. Morje with Vidhyabhushana Mallik for the respondent no.4.

Mr.J.S. Kini for the respondent nos.5 and 6.

CORAM : D.G. KARNIK,J.

DATED : 20th June 2005.

ORAL JUDGEMENT:

1. By this petition, the petitioner Society challenges the order dated 9th July 2002 passed by learned Divisional Joint Registrar (Appeals), the second respondent herein, allowing the appeal filed by the respondent no.1.

2. The petitioner is a co-operative housing society registered under Maharashtra Co-operative Societies Act (for short 'the Act'). Initially, the petitioner had enrolled about 40 members. On 17th October 1984, the petitioner purchased a plot of land for the purpose of construction of a building of flats for its members. The petitioner commenced the construction of a building and it appears that construction upto the plinth level was completed. Thereafter, some disputes arose regarding the area of the plot and right of way through the property of the society claimed by some strangers on account of which the further construction could not be made. As money was needed for the purpose of defraying the expenses of litigation, by a resolution dated 23rd March 1994 passed in its general body meeting the petitioner society resolved to call a sum of Rs.5,000/- from

each member. Letters were written to all the members calling upon them to pay a sum of Rs.5,000/- to the Society. Such letter was also written to the respondent no.4 who was a member. As she did not make the payment, reminders were sent to her on 3rd September 1994, 3rd October 1994, 12th January 1995, 8th March 1995 and 22nd April 1995 but the respondent no.4 failed and neglected to pay. The petitioner society also came to know that in the meanwhile the respondent no.4 had acquired another residential flat and therefore, was not entitled to continue to be a member of the petitioner Society. The petitioner society, by its letter dated 26h June 1995 requested the respondent no.4 to submit the details about her acquisition of residential premises. Not being satisfied with the reply of the respondent no.4, the petitioner Society decided to take action of expulsion of respondent no.4 on the ground of non-payment of its dues despite demand and reminders as also on the ground of acquisition of other flat within the area of operation of the Society. Accordingly, on 16th May 1996, a show cause notice was issued to the respondent no.4 requiring her to show cause why she should not be expelled from the membership of the Society. On 9th September 1996,

the Society issued a notice of special general body meeting to be held on 28th September 1996 for considering whether an action of expulsion should be taken against respondent no.4 and one other member who was also a defaulter and who had also acquired other residential flat. The other defaulter member is the respondent no.4 in Writ Petition no. 2175 of 2002 which has been heard along with this petition.

3. In pursuance of the notice of meeting dated 9th September 1996, special general body meeting of the petitioner Society was held on 28th September 1996. In the said meeting, the explanation given by the respondent no.4 was considered and she was also heard. Thereafter the members of the Society unanimously resolved to expel the respondent no.4. On 14th October 1996, the Society sent the resolution of expulsion of the respondent no.4 for approval of the District Dy. Registrar as required under proviso to sub-section(1) of section 35 of the Act. Initially, the District Dy. Registrar refused the approval but on revision, the Joint Registrar allowed the Revision Petition filed by the petitioner society and granted approval for expulsion. On a further revision, the Government of Maharashtra set aside the

order of the Joint Registrar and confirmed the order of the District Dy.Registrar. Two Writ Petitions bearing nos.1127 and 1128 of the year 2001 were filed by the Petitioner Society against the respondent no.4 herein and the other expelled member, being the respondent no.4 in Writ Petition no.2175 of 2002, challenging the orders of the State Government. By an order dated 31st July 2001, this Court held that the parties were required to be given appropriate opportunity of hearing by the Registrar before granting or rejecting to grant approval for expulsion for membership and since proper opportunity of hearing was not given to the parties the orders were bad-in-law. This Court therefore set aside the order of the State Government and remanded the matter back for fresh hearing at the hands of District Dy. Registrar. Accordingly, District Dy. Registrar, the third respondent, herein issued notices to the parties and after giving a proper opportunity of being heard, by an order dated 22nd October 2001 granted approval for the resolution of expulsion of the respondent no.4. Aggrieved respondent no.4 filed Revision Application before the Divisional Joint Registrar. By an order dated 9th July 2002, the Divisional Joint. Registrar allowed the revision and

set aside the order of the District Dy. Registrar granting approval. That order is impugned in this Writ Petition.

4. A perusal of the order of Divisional Joint Registrar shows that he allowed the revision and set aside of the District Dy. Registrar granting approval to the resolution of expulsion of respondent no.4, principally on three grounds, viz:

i) Though the respondent no.1 was a defaulter in payment of Rs.5,000/-, the default could not be said to be deliberate and in total disregard to the working of the Society, because though the Society was formed in the year 1981 and the land was purchased in 1984, the Society had not done much progress about the work of construction till the year 1995.

ii) That the residential premises were not acquired by the petitioner but her husband by way of inheritance and therefore no action could be taken against the respondent no.4.

iii) The general body meeting for considering the resolution of expulsion of the respondent no.4 was convened by a notice dated 9th September 1996 and the meeting was held on 28th September 1996. Therefore, the notice was not of one month duration as required under Rule 29 of the Maharashtra Co-operative Societies Rules 1961 (for short 'the Rules') and was void.

5. Mr.Deshmukh, learned counsel appearing for the petitioner submits that the respondent no.2 exceeded the revisional powers. The revisional court could not have interfered in the findings of facts recorded by third respondent unless the findings were perverse or based on no evidence. The District Dy. Registrar had taken into consideration all the relevant materials and had recorded a finding of fact that the respondent no.4 was a wilful defaulter. This finding was not only possible but was of a finding based on preponderance on probability and therefore could not have been set aside in revision. He further submits that under bye-law no.12a of the petitioner society, if a member of the petitioner, after being admitted as a member acquires a house or a flat in his name or in the name of his spouse, the managing committee had

a right to call upon such member to resign from the membership failing which he could be expelled. By law no.12a was absolute and did not make any differentiation as to whether the member or his spouse acquired flat by an act inter vivos or by inheritance and therefore, the second respondent erred in holding that respondent no.4 could not have been expelled because her husband had acquired the flat by inheritance. In my view, it is not necessary to record any final finding on these submissions because the petitioner in any event must fail on the ground that the notice convening general body meeting was not valid for the reasons mentioned below.

6. Sub-rule(1) of Rule 29 of the Rules reads as follows:-

> "29(1) Where any member of a society proposes to bring resolution for expulsion of any other member he shall give a written notice thereof, to the Chairman of the society. On receipt of notice or when the committee itself decided to bring in such resolution, the consideration of such resolution shall be included in the agenda for the next general meeting and a notice thereof shall be given to the member against whom such resolution is proposed to be brought, calling upon him to be present at the general meeting to be held not earlier than a period of one month from the date of such notice and to show cause

> against expulsion to the general body of members. After hearing the member, if present, or after taking into consideration any written representation which he might have sent, the general body of members shall proceed to consider the resolution."

Sub rule (1) prescribes that where the committee of a Society decides to bring on a resolution in the general body of the society for expulsion of a member, a notice of the proposed meeting shall be given to the member, against whom resolution is proposed to be brought calling upon him to be present at the general body meeting to be held not earlier than the period of one month from the date of such notice to show cause against the expulsion. The purpose of notice contemplated in Rule 29 is to give adequate opportunity to the member who is sought to be expelled on serious grounds such as persistent default or failure to comply with the provisions of the bye-laws. Any resolution expelling a member of the membership of a society has serious consequences affecting his civil rights. In case of a housing society like the present one, the member would be deprived of his right to acquire, hold and possess the residential unit affecting his civil rights to and in the property. Furthermore, sub-section (2) of

section 35 prevents an expelled member to be re-admitted as a member of the society or any other Society for a period of one years from the date of expulsion, unless the Registrar on an application allowed or sanctions re-admission or admission as the case may be. Rule 29 is a safeguard against unreasonable action of a society to expel a member. Rule 29 gives an opportunity to the member to show cause against the expulsion. In my view Rule 29 is mandatory and the society must strictly comply with the provisions of Rule 29 before expelling a member. I am fortified in my view by a decision of a Division Bench of this Court rendered in Bhaskar Laxman Rane versus Shri Gurudev Nityanand Co-operative Housing Society Ltd. reported in 1998 (3) Mh.L.J. 127.

7. Rule 29 requires the society to give a notice of the meeting of the general body in which a resolution of expulsion of the member is to be proposed. It further says that the general meeting shall not be held earlier than one month from the date of such notice. In the present case, admittedly, the notice of the general body meeting was issued to the respondent no.4 on 9th September 1996 and meeting was held on 28th September 1996.

Ex-facie, the notice was of a shorter duration and was not in accordance with Rule 29 of the Rules. There has been a breach of Rule 29 which as held earlier is mandatory and was required to be strictly followed by the petitioner. In view of this, the Divisional Joint Registrar was right in setting aside the order of the District Dy. Registrar approving the resolution of the petitioner.

8. Learned counsel for the petitioner submits that the disability incurred by respondent no.4 on account of her action of non payment of the dues despite repeated demands and having acquired other residential premises in the area of operation of the Society in the name of her husband continues and therefore, the petitioner should be free to take appropriate action against the respondent no.4 on the said grounds. He submits that the petitioner intends to pass a fresh resolution against the respondent no.4 after complying with the provisions of Rule 29 and all other applicable provisions and the petitioner should be permitted to do so. He further submits that after the expulsion of the respondent no.4, the respondent no.5 has been admitted as a new

member in place of respondent no.4 and has since paid the necessary contribution and the dues. The respondent no.5 has further transferred his rights and the flat to the respondent no.5. Third party rights have already been created and the flat has already been allotted to the respondent no.5/6. Therefore, the rights of respondent nos.5 and 6 are likely to be affected. Learned counsel for the petitioner further submits that since the respondent no.4 had incurred a disqualification and the disqualification continues, the petitioner must be permitted to take appropriate action against the respondent no.4 by following due procedure of law. Since action against the respondent no.4 is being set aside, only on a technical ground of insufficiency of the duration of notice, in my view, the petitioner is free to take appropriate action against the respondent no.4 as is otherwise permissible in law and any observations in this judgement or in the impugned judgement would not come in the way of the petitioner for taking such action, if any action can be taken against the respondent no.4, in accordance with law.

9. With these observations the, petition has to

be dismissed. Accordingly, petition is dismissed. Rule discharged. In the facts and circumstances of the case parties shall bear and pay their own costs throughout.

D.G. KARNIK,J